UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 09 CR 948 (NRB)
S1 09 CR 1188 (LTS)

BRANDON LISI,

Defendant.

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New York, N.Y.
December 12, 2012
12:00 p.m.

Before:

HON. NAOMI REICE BUCHWALD,
-and-
HON. LAURA TAYLOR SWAIN,

District Judges

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
MICHAEL D. LOCKARD
RYAN POSCABLO
Assistant United States Attorneys

MORITT HOCK & HAMROFF LLP
Attorneys for Defendant
RANDY ZELIN

(Case called)

MR. LOCKARD: Your Honor, Michael Lockard and Ryan Poscablo, for the government.

MR. ZELIN: Good afternoon, your Honors. My name is Randy Zelin. I represent Brandon Lisi.

THE DEFENDANT: Good morning, your Honor.

JUDGE BUCHWALD: I guess the first order of business might be the government's letter of December 11. Mr. Zelin, I assume by now you've received this.

MR. ZELIN: I received it about ten seconds ago, your Honor.

JUDGE BUCHWALD: Do you want to take a few minutes to peruse it?

MR. ZELIN: Thank you, your Honor.

JUDGE BUCHWALD: Let the record reflect that Judge Swain and I also received a letter from Mr. Zelin yesterday, dated December 11, with an attachment of a letter from Sloan-Kettering and the advice from NorthShore-LIJ that Mr. Brandon Lisi had been in the office of Dr. Tenet, on December 10, where he had a stress test and an echocardiogram.

Mr. Zelin.

MR. ZELIN: If your Honors please, I have had the opportunity to take a look at the government's December 12 letter, and I respectfully submit I'm going to need time to review this letter in great detail. This is the first I'm hearing of this. I had no prior notice whatsoever that the government had any issue with my client relative to his release, let alone allegations of a nature where the government would be seeking to revoke his bond. Therefore, I would respectfully request that we adjourn today to give me an ample opportunity to review the allegations, to meet with my client, and to make a determination, both internally and along with the government, with regard to a hearing with regard to these allegations.

I would respectfully submit to both of your Honors that my client has been on release now for the better part of three years. Not only has he made every court appearance when required, your Honors will recall back in April of 2012, he brought his mother with him on a stretcher because your Honors ordered my client to appear, and, as the Courts know, my client's mother suffered a stroke back in February, and he right now is her sole caregiver.

Unfortunately, what made it easier for my client to be here today is the fact that Mrs. Lisi is currently hospitalized at Glen Cove Hospital. She is not in good condition whatsoever, but from the standpoint of the Courts having any concern whatsoever that my client is a flight risk as a result of these allegation, again, your Honors, I would respectfully submit that notwithstanding the latitude the Courts have granted the defense with regard to adjournments, when required to appear, my client appeared.

My client was here early today, as we had been told to be here early today, prior to noon, for this appearance. My client is on the verge of having suffered an asthma attack because he couldn't drive in so he walked from Chambers Street, got off at the two and three and walked here to make sure that he got here on time. There is nothing before the Courts where your Honors should have any concern whatsoever that my client is going to flee the jurisdiction.

With regard to the allegations, again, I have only had an opportunity to scan the government's letter. But to the extent that the government is taking the position that my client poses some kind of economic danger, since there's nothing before the Courts to suggest that my client is a danger to anyone in the community, I would respectfully submit that, first of all, with regard to at least some of the allegations that talk about my client having practiced law outside the scope of what he was allowed to practice before he was no longer a lawyer, my client has not been a lawyer now for the better part of eight months. So these allegations are at least eight months old, if not older.

With regard to the additional allegations concerning monies loaned and some notion about a half a million dollars, your Honors, there was an extensive litigation that took place in the Supreme Court of Nassau County before the Honorable

Timothy Driscoll. I appeared in those matters as Mr. Lisi's criminal counsel. And not once during those proceedings before Justice Driscoll was there any allegation, during those proceedings at any time on the record before Justice Driscoll, that my client had engaged in any kind of fraud whatsoever. In fact, there was extensive litigation concerning the foreclosure of one of the properties that is listed in the government's allegation, and we raised an allegation or raised the issue of whether or not the foreclosure was commercially reasonable. And one of the things that Justice Driscoll was particularly concerned about was since Justice Driscoll was a former federal prosecutor himself, and I argued that it was very important that the foreclosure be commercially reasonable, and there was even an instance where there were negotiations to purchase the property for full value, so this way there would be no loss.

JUDGE BUCHWALD: First of all, which property are you speaking of?

MR. ZELIN: 53-55 Main Street in Cold Spring Harbor or 51-55 Main Street in Cold Spring Harbor.

JUDGE BUCHWALD: What was the nature of the litigation?

MR. ZELIN: The nature of the litigation, as I recall, at least one aspect of it was whether or not the property should go to a foreclosure sale or whether or not the property should be purchased by a third party.

I was involved in those proceedings because I was very concerned that the property be sold at its highest value because that would factor in to the loss calculations for purposes of sentencing here, whether by virtue of a plea agreement or a conviction after trial, if my client were convicted at any level.

JUDGE SWAIN: I have a question, for clarification.

I thought you had said that you were involved in this proceeding with Justice Driscoll as his criminal counsel, which raised in my mind a question of what type of proceeding it was. So are you saying that this was a foreclosure proceeding in which you became involved in your capacity as Mr. Lisi's defense attorney for this case because of concerns about restitution, and so forth? Or was that thing in the Supreme Court proceeding a criminal proceeding?

MR. ZELIN: It was the former, your Honor. This was a Nassau County civil Supreme Court matter.

As I recall, there was an application for a stay of the foreclosure proceeding on the 51 through 55 Main Street, Cold Spring Harbor premises. That matter ended up before Justice Driscoll. I appeared as Mr. Lisi's criminal counsel for purposes of ensuring that to the extent that the foreclosure sale was going to go through or to the extent that a sale of the premises could be negotiated, that I was aware that the property would be sold at its highest value, solely to ensure that for either loss calculations, for purposes of the fraud guidelines and/or for purposes of restitution, that the highest possible value for those premises be realized.

My appearance had nothing to do with any allegations of new criminal conduct on the part of my client.

JUDGE SWAIN: Are you representing that the person described as the victim/complainant in the government's letter was also active in that Nassau County litigation regarding the Cold Spring Harbor property? You seem to be saying this never came up in that litigation. But was that person involved in that litigation?

MR. ZELIN: Let me just make sure that I understand which person we are actually talking about, if your Honor please.

JUDGE SWAIN: The victim.

MR. ZELIN: As I recall, Paul Katsaros was involved in that litigation. In fact, I think he was the plaintiff in the litigation, and he was the one who had brought an action to stay the foreclosure proceeding. As I recall, and again, this is my recollection, Mr. Katsaros was interested in purchasing the property.

JUDGE SWAIN: Was a widow who was supposedly a silent and involuntary investor in this property involved in that litigation?

MR. ZELIN: Not to my knowledge.

JUDGE SWAIN: Thank you.

MR. ZELIN: Just a point of clarification. It may be that she was, but I don't know the woman's name. I have never met the woman. She was not, as I recall, a party in that litigation.

JUDGE SWAIN: Thank you.

Mr. Lockard.

MR. LOCKARD: I thought it might be helpful for the Courts for me to provide some background on some of the litigations Mr. Zelin is describing because there has been a lot of litigation both prior to and following Mr. Lisi's indictment and arrest in this case, and all those proceedings in fact are very much related to our contention about the risk of harm that Mr. Lisi poses to the community and to other individuals.

In the big picture, Mr. Lisi and his coconspirators, who are charged in Suffolk County -- that's where the Cold Spring Harbor property was at issue, in the Suffolk County case -- obtained a million-dollar-plus mortgage from Washington Mutual through the type of fraud that's discussed in our letter to the Courts. As is discussed in some of the proceedings in the various litigations that spun out of that, that mortgage was applied for by a company called Clear Blue Water, which is a company that was formed by Mr. Lisi, but whose nominal owners were his codefendants in Suffolk County, Melissa Lanzilotta, who owned the title company, and Jason Higgins, who was an alias of Mr. Lisi's, essentially a stolen identity.

The mortgage on that property went in default within a few months of the closing. Washington Mutual and its successor in interest, J.P. Morgan Chase, initiated a foreclosure action in Suffolk County, the first litigation, and that mortgage was later acquired by a company called Oyster Bay, which continued the foreclosure action. There have since then been three separate litigations, the common thread to which has always been Mr. Lisi.

The first was a bankruptcy in the Eastern District of New York where the individual that Mr. Zelin mentioned, Paul Katsaros, filed a bankruptcy on behalf of Clear Blue Water, claiming that he had acquired that company from Mr. Lisi in satisfaction of an approximately hundred-thousand-dollar debt. Mr. Katsaros was deposed in that action, and we can provide that deposition to the Courts, but I submit, in sum and substance, it shows that Mr. Katsaros was not able to describe in any detail the nature of the debt, when he provided that money to Mr. Lisi, under what circumstances, or what the source of the funds was. He knew very little about the property. He knew very little about Clear Blue Water. He knew very little about the tenants that were supposed to have occupied that property. In sum and substance, Mr. Katsaros appeared to have been a nominal owner of Clear Blue Water.

He filed the bankruptcy for the sole purpose of staying a foreclosure sale that was imminent in the Suffolk County proceedings. That bankruptcy action was dismissed.

Shortly after that, Clear Blue Water, again, through Mr. Katsaros, filed a declaratory judgment action in Nassau County, again seeking a stay of the foreclosure action, again with Mr. Lisi's involvement. That action ultimately was also dismissed.

Having failed to stop the foreclosure sale with Mr. Katsaros, that's the introduction of NKL Enterprises, the entity that's discussed in our letter, and the victim, individual one, and his wife are also discussed in our letter. Again, the victim, as described in our letter, was essentially recruited by Mr. Lisi and another attorney to make these investments, to buy a mortgage, a second mortgage on the property in Cold Spring Harbor, to use that to obtain title to the property through deed in lieu of foreclosure, to file another bankruptcy action, to seek to stay a foreclosure sale, a bankruptcy that was filed on the morning of the scheduled auction, and that bankruptcy was also dismissed.

Money from the second entity, NKL Enterprises, has been used to pay the attorney's fees for Clear Blue Water. It has been used to pay money for unknown purposes to the attorney that Mr. Lisi has worked with, and it's clear throughout this that Mr. Lisi has, in essence, been seeking to continue to exercise control over that property without having his name on the title and without having his own money at stake. So the litigations that Mr. Zelin is describing, far from demonstrating some sort of compliance with the law, go directly to the type of economic harm that we're concerned about: Misrepresentations to the courts about the true economic interest and the true ownership of the property; active efforts to misrepresent Mr. Lisi's involvement; tying up not only the courts' resources in at least three different jurisdictions, also delaying the foreclosure sale to the harm of the mortgage lender who is seeking to foreclose; and, finally, the harm to the victim discussed in our letter whose money was used by Mr. Lisi for these purposes.

JUDGE SWAIN: Perhaps at this point, Mr. Lockard, you should be clear about the precise nature of your application today.

MR. LOCKARD: Our application today is to revoke Mr. Lisi's bail so that he may be remanded pending trial. We think it's clear that throughout his extensive course of conduct while on supervised release that there is no way to mitigate the risk of harm he poses to the community. He has managed, through at least Mr. Katsaros and the victim in NKL Enterprises, to continue to seek to exercise influence over the properties that he obtained through fraud, to exercise influence over vulnerable individuals to provide him with access to funds, to engage in personal financial transactions with individuals who understood him to represent them as an attorney, to divert funds, to do this under the cover of a law firm, to do it in concert with other individuals, and, in sum, there are no conditions that can adequately protect the community from Mr. Lisi's ongoing conduct.

MR. ZELIN: If your Honors please, again, I appeared as Mr. Lisi's criminal counsel in the Nassau County proceeding before Justice Driscoll. That was litigated extensively over many, many, many months. Each of the parties in that litigation was represented by counsel. There was no one at any time, to my knowledge, who appeared pro se. There was no one at any time who appeared before Justice Driscoll in his courtroom, made any allegations of any fraudulent conduct whatsoever.

The litigation before Justice Driscoll was over whether or not the foreclosure proceeding of 51 through 55 Main Street should go forward. As I recall, Justice Driscoll had signed a temporary restraining order. That temporary restraining order remained in effect for many, many months while the parties attempted to negotiate a sale of the premises. As I recall, part of the way the deal was structured -- and again, I was not civil counsel, so I was not involved in the negotiations. There was separate counsel for all of the parties, including for Mr. Lisi. Mr. Lisi had civil counsel representing him in those matters.

As I recall, where the government speaks of Mr. Katsaros being a nominal defendant, what I recall is that Mr. Katsaros was attempting to purchase the shares in Clear Blue Water, so it was supposed to be the sale of the shares so he would then become the principal of Clear Blue Water rather than purchasing assets. In other words, your Honor, I think what I'm trying to say is that with regard to these allegations that have been brought to my attention now for the first time by the government, there was an extensively litigated civil component to that matter, and I don't know what is motivating people to come forward now. I don't know if it's a matter of dissatisfaction with what happened to their investment. I'm not privy to any of that. But it's unfortunate that what may otherwise appear to be legitimate business transactions suddenly becomes criminalized, and since my client is on release right now, it's a very scary proposition to walk into a courtroom and suddenly find out that after three years of compliance with the terms of his release that the government is now moving for a remand.

What I would respectfully submit is that we adjourn today, that I be given an opportunity to properly review and assess the allegations that have been brought by the government, adequately prepare to defend this hearing, and, quite frankly, your Honor, there are a number of allegations which involve other attorneys. I don't believe that I am any one of those attorneys that are named, but I think I have a responsibility to determine, and it's something that I would hope that the government would share with me because the attorneys are given the monikers attorney one, and a number of people involved, their names are not disclosed. And I think it would be critical for us to determine, since we're dealing with members of the bar, who these other attorneys are, and these other attorneys may need to come before the Courts to be heard. I don't know. But I'm seeing a lot of allegations for the first time, and I'm simply requesting an opportunity to prepare and to be able to defend these allegations.

JUDGE BUCHWALD: All right. Judge Swain and I have conferred, and while we're not inclined at this moment to grant the government's application to remand Mr. Lisi into custody, we do think that there is sufficient concern so that we are going to place Mr. Lisi on home confinement with electronic monitoring. We understand that Mr. Lisi has obligations to his mother and that he has health issues, although they're hardly documented, and so our intent is that home confinement take into consideration those two problems, obviously, with notice to his pretrial officer, Mr. Rothman, who is here in court at our request. He is certainly free to go to medical appointments. He is certainly free to visit his mother while she's in the hospital. If there is an emergency medical situation with his mother, he should call his pretrial officer. He's allowed to deal with it; he's not supposed to wait to get the okay to deal with the emergency, if it means he has to leave the house. He'll have to explain it afterwards.

MR. ZELIN: Thank you.

JUDGE BUCHWALD: He should try, but if he can't reach Mr. Rothman, he's not supposed to keep his mother waiting for the okay.

There is going to be a requirement that he document to his pretrial officer any appointments that he is going to, that he's taking his mother to, and he can work out with his pretrial officer some capacity to leave the house for a short period of time every other day or something for the purposes of doing things like buying food.

As Judge Swain reminds me, of course, the same rules apply to appointments with counsel. But his pretrial officer needs to know about them in advance and there should be confirmation of them. I assume an e-mail from you would be sufficient.

MR. ZELIN: Yes, your Honor.

JUDGE BUCHWALD: The other thing, of course, the topic that we had on the table many months ago, concerned Mr. Lisi's --

I'm sorry.

MR. POSCABLO: Your Honor, before we get off topic, I apologize, one other thing, if the Court would consider directing Mr. Lisi not to have any contact with victim one, with the victim that's outlined. If they don't know who that person is, we can inform Mr. Zelin who that individual is, but we would hope that the defendant would not have any contact with that individual.

JUDGE BUCHWALD: I think that's for her benefit and for his benefit, and it's so ordered.

As I was saying, the topic that had been on the table now some months ago was setting a trial date and the assertion by Mr. Lisi that he was not physically capable of going to trial. It was certainly, I think, the express view of both judges that based on the hearing we had that he was capable, and Mr. Lisi was given some opportunity, now for a number of months, I don't remember the date of the last hearing, to try to dissuade us of that conclusion. It's clear that nothing has been presented.

My case is the one with the lower number, and at this point I think we do need to set a trial date. I am proposing June 11, which, even assuming there are some medical issues, is more than enough time to resolve them. I think it is truly time to resolve this case and the one in front of Judge Swain. But, as I say, I have the lower number, and if it can't be resolved some other way, it really does just need to be tried. We're at the point where everybody else in my case has pled.

Most people, if not all, have been sentenced. The case is an '09 docket number and we're about to hit 2013.

I hear nothing. It's amazing.

MR. LOCKARD: June 11 works for the government, your Honor.

MR. ZELIN: June 11 it is, your Honor.

JUDGE BUCHWALD: All right. I assume there is no objection to excluding the speedy trial time until then.

MR. ZELIN: No, your Honor.

JUDGE BUCHWALD: All right.

Mr. Zelin, do you anticipate any in limine motions in this case?

MR. ZELIN: Your Honor, what I would respectfully suggest is, given the fact that we now have a trial date and there is some uncertainty in terms of the future of the case, what I'd like to do is have an opportunity to confer with the government. It's been some time since we've actually focused in on the discovery and focused in on any appropriate motions. I will confer with the government and just kind of now go back into that mode, so if I could have an opportunity to first --

JUDGE BUCHWALD: Let me give you a month to get back to me --

MR. ZELIN: Yes, your Honor.

JUDGE BUCHWALD: -- with what you propose.

MR. ZELIN: Yes, your Honor.

JUDGE BUCHWALD: At that time, I will set a date for motions and pretrial submissions.

MR. ZELIN: Thank you.

JUDGE SWAIN: I would also just like to have a conference date in my case on my calendar closer to your trial date so that we can see how that is progressing.

MR. ZELIN: Yes, your Honor.

JUDGE SWAIN: And so if you give me a moment, I am proposing Friday, the 17th of May, at three in the afternoon.

MR. ZELIN: Yes, your Honor.

JUDGE SWAIN: Does that work for the government as well?

MR. POSCABLO: It does, of course, your Honor.

JUDGE SWAIN: May 17, 2013, at 3:00, in my courtroom.

MR. POSCABLO: The government asks to exclude the time in the case before your Honor from now until then as well.

MR. ZELIN: No objection.

JUDGE SWAIN: That application for exclusion is granted. I make the finding pursuant to (7)(A) of 3161(h).

MR. ZELIN: Thank you, your Honor.

JUDGE BUCHWALD: Mr. Zelin, you and Mr. Lisi should confer with Mr. Rothman about the home confinement conditions and getting an electronic bracelet.

MR. ZELIN: Yes, your Honor.

(Proceedings adjourned)